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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:)	Case No.: 10-71788
)	
JESUS EDGAR MONTANO,)	Chapter 7
)	
Debtor.)	Adversary Case No. 11-4008
)	
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HERITAGE PACIFIC FINANCIAL, LLC.,)	MEMORANDUM IN SUPPORT OF
d/b/a HERITAGE PACIFIC FINANCIAL,)	DEFENDANT'S RULE 26(b) MOTION
a Texas Limited Liability Company,)	FOR ADDITIONAL
)	INTERROGATORIES
Plaintiff,)	
)	
v.)	Hearing Date: March 13, 2013
)	Time: 10.30 AM
)	Courtroom: 220
JESUS EDGAR MONTANO,)	Place: 1300 Clay Street
)	Oakland, CA 94612
Defendant.)	
)	Before Honorable Judge William J Lafferty
)	

**Memorandum of Points and Authorities in Support of Motion for Leave to Serve
50 Post-Judgment Interrogatories**

Defendant seeks leave of court to serve additional interrogatories on judgment debtor
Heritage Pacific Financial, the Chapter 13 Bankruptcy Trustees administering cases from which

1 HPF receives funds, and on entities connected to HPF, specifically, but not limited to, Heritage
2 Pacific Holdings.

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4 Federal Rule of Civil Procedure (“Rule”) 33(a)(1) provides that a party may serve no
5 more than 25 interrogatories on any other party. Rule 26(a)(2) provides that a court may enter an
6 order altering the limits imposed by the rules. Defendant requests an order allowing him to serve
7 post-judgment interrogatories as allowed under Rule 69(a). These interrogatories and the
8 Plaintiff’s responses will afford Defendant a shot at actually obtaining the relief that was ordered
9 by this Court in its January 25, 2013 Order on Defendant’s Rule 54 Motion for Attorney’s Fees
10 and Costs.
11

12 Rule 69 (a) provides for broad post-judgment discovery by the judgment creditor “from
13 any person—including the judgment debtor” to assist in the “judgment or execution.” FRCP
14 69(a)(2). *See Baker v. Limber*, 647 F.2d 912, 920 (9th Cir. 1981)(“The purpose of a Rule 69
15 proceeding is to identify assets from which a judgment might be satisfied.”) This discovery
16 should enable the judgment creditor to obtain discovery of “the debtor’s current assets [and] also
17 of past financial transactions which could lead to the existence . . . of concealed or fraudulently
18 conveyed assets.” *See Dering v. Pitassi*, 1988 WL 115806 at *1 (E.D. Pa. 1988).
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21 During the Rule 26f communications, Defendant’s counsel noted that she would need
22 more than the 25 interrogatories. *See* July 5, 2011 Discovery Letter, a true and correct copy of
23 which is attached as Exhibit A to the Declaration of Tessa Meyer Santiago. Nevertheless, when
24 Defendant served thirty-three interrogatory requests on Plaintiff HP in the first round of
25 discovery, HP refused to answer all interrogatories after number 25, stating that the rules did not
26 allow for additional requests. *See* Plaintiff’s Response to Defendant’s Interrogatory Requests, a
27 true a correct copy of which is attached as Exhibit B to the Declaration of Tessa Meyer Santiago.
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1 Taking into consideration Plaintiff's actions throughout this litigation, Defendant anticipates a
2 similar reaction to these post-judgment interrogatories if they were served without the order
3 altering the number of interrogatories allowed under the rules. Defendant therefore moves the
4 Court for leave to serve additional interrogatories on Plaintiff in order to determine the nature,
5 location, and source of Plaintiff's financial resources from which the judgment for attorney's
6 fees can be satisfied.
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8 Using interrogatories is the most cost-efficient means of discovering the evidence
9 necessary to allow Defendant to execute and recover on the judgment. It is also the most time-
10 efficient manner in which to receive information, as requests must be responded to within 30
11 days.
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13 Time is of the essence in this case. Heritage Pacific is experiencing a business downturn.
14 Mr. Ganter, manager and owner of Heritage, has testified under oath that the business model as
15 conceived by him and his brother was based on the understanding that California anti-deficiency
16 statutes did not apply to foreclosed seconds. *See* Deposition of Ben Ganter, a true and correct
17 copy of which is attached to Declaration of Tessa Meyer Santiago as Exhibit E, at page 14, line
18 13 - page 15 line 22 (buying sold-out unsecured California seconds); page 18, lines 15-18 (the
19 fact that sold-out seconds are not subject to anti-deficiency statutes in California is a factor in
20 buying loan portfolios); page 22, lines 6 -20 (Heritage actively sues and collects from California
21 borrowers as of October 2011); page 62 lines 9-16 (stating that owner occupancy was not
22 significant when suing for fraud); page 71 lines 21 – page 73 lines 19 (describing the legal
23 research performed by him and his brother relating to anti-deficiency statutes and their
24 applicability to default seconds in California)
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1 The business model conceived of by Heritage Pacific has not prospered in California as
2 the courts have not interpreted California statutes as Heritage predicted. Heritage did not take
3 into account the reach of Cal. Civ. Code 726(f) and (g). As a result, Heritage has suffered
4 operation losses of 3 million dollars in 2010. *Id.* at page 28 line 11 – page 29 line 8. Heritage is
5 already changing their business model after only 2 years. *Id.* According to Judge Yew, of the
6 Santa Clara Superior Court, Heritage Pacific once had as many as 40 employees, devoted to the
7 collection of the amounts owing on the defaulted, unsecured mortgage notes that Heritage Pacific
8 bought on the secondary market. *See* Proposed Statement of Decision Following Court Trial,
9 attached to Declaration of Tessa Meyer Santiago, as Exhibit D, page 5. In October 2011, it had
10 between 22 and 25 employees. *See* Exhibit E, page 9, lines 7-9. One year later, as of October,
11 2012, Heritage Pacific has six employees. *See* Exhibit D, page 5. Heritage is also facing the
12 payment of significant attorney's fees and costs associated with the judgments that have been
13 entered against it. Defendant fears that if he does not obtain the information requested in the
14 Rule 69 Post-Judgment Interrogatories, a true and correct copy of which is attached as Exhibit C
15 to this Motion and Memorandum, Heritage Pacific will hide assets and end operations in
16 California. *See* Exhibit E, pages 134-137, showing that all HP entities were deliberately formed
17 as separate LLC's so that none is connected to the other.

21 Accordingly, the Defendant moves the Court for an Order altering the number of
22 interrogatories served in this case by Defendant to seventy-five (75). This would allow for the
23 service of the 25 requests attached as Exhibit C to the Declaration of Tessa Meyer Santiago, as
24 well as 25 additional interrogatories to third parties with relevant information concerning
25 Heritage Pacific's ability to pay the judgment. Without these additional interrogatories,
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1 Defendant will have little ability to recover the judgment entered in his favor against Heritage
2 Pacific Financial.
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5 DATED: 12 February, 2013

Respectfully submitted,

6 /s/ Tessa Meyer Santiago
7 Tessa Meyer Santiago
8 LINCOLN LAW, LLP
9 Attorney for Defendant Montano
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